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PARTIES' JOINT SUBMISSION OF DISPUTE CONCERNING ORDER REGARDING LIMITATIONS ON NUMBER AND LENGTH OF NON-EXPERT DEPOSITIONS

The parties have been negotiating in good faith on the Order Regarding Limitations on Number and Length of Non-Expert Depositions ("Non-Expert Deposition Order") and have reached agreement on all but one issue: the number of depositions conducted pursuant to Fed. R. Civ. P. 30(b)(6). Exhibit A is a draft of the proposed Non-Expert Deposition Order, with Plaintiffs' and Defendants' competing versions of the 30(b)(6) provision highlighted for reference.

A. Plaintiffs' Position

From Plaintiffs' perspective, given the parties' agreement to permit fourteen (14) hours for Rule 30(b)(6) testimony, it would be inefficient and unduly restrictive to allow Plaintiffs to serve only one Rule 30(b)(6) notice on each Defendant during the significant period for fact discovery in this matter; and as to Defendants' proposal that they would agree to discuss with Plaintiffs whether to permit further Rule 30(b)(6) testimony, the better use of the Court's time is to resolve the issue now, on a global basis, rather than kick the can and raise the prospect that the parties would have to approach the Court on this issue on multiple different bases with multiple different Defendants. The resolution of the issue now would also, of course, permit Plaintiffs to better plan their taking of discovery.

The parties' agreement on fourteen (14) hours reflects the number of issues this complex matter presents and the length of the period of time over which they have arisen (such that many percipient witnesses are no longer employed by Defendants). Under the circumstances, Plaintiffs want to have asked each Defendant to address as many of the relevant topics as they can identify during discovery, and Plaintiffs want to use each Defendant's Rule 30(b)(6) testimony to facilitate fact discovery. Accordingly, Plaintiffs would like to reserve the flexibility of taking some Rule 30(b)(6) testimony during fact discovery, and then—after further document review, after further

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fact depositions, and after having considered that initial Rule 30(b)(6) testimony—identifying further topics for Defendants to address near the end of fact discovery.

Plaintiffs may not follow that route for each Defendant, or even most of them, but they want to reserve the right to do so depending on the Defendants' involvement in the 568 Group. Defendants' proposal would force Plaintiffs either (a) to wait until near the end of fact discovery to identify and pursue all of the Rule 30(b)(6) topics they have identified by that point, which eliminates the efficiency of using Rule 30(b)(6) testimony to facilitate the taking of fact discovery in the first place; or (b) to take all of their Rule 30(b)(6) testimony in the middle of fact discovery, which would eliminate Plaintiffs' ability to identify and pursue further topics based on the fact discovery that occurs after that Rule 30(b)(6) deposition. Plaintiffs submit that their approach is the more efficient and reasonable one.

B. Defendants' Position

The disputed issue concerns whether Plaintiffs should be permitted to subject each individual Defendant to multiple 30(b)(6) depositions. Defendants' view is that Plaintiffs should be entitled to a single 30(b)(6) deposition for up to 14 hours of testimony. Plaintiffs' position is that they can allot the 14 hours into multiple 30(b)(6) depositions. Defendants initially proposed that the parties adhere to the Federal Rules' presumptive limit of seven hours for each 30(b)(6) deposition, and when Plaintiffs serve deposition notices, the parties could then discuss in good faith whether more time would be necessary to cover the topics that are described with reasonable particularity. Plaintiffs rejected Defendants' proposal and reiterated their demand that they be entitled up front to 14 hours of 30(b)(6) testimony. In an attempt to avoid further briefing, and after two telephonic meet and confers and multiple exchanges of proposals, Defendants offered a reasonable compromise in which Defendants would agree to Plaintiffs' desired 14-hour limit,

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provided that they are only entitled to one 30(b)(6) deposition up to 14 hours and if any such deposition lasts more than seven hours it would count as two depositions towards the agreed-upon ten-deposition limit for that Defendant.

Plaintiffs, perplexingly, say they agree to the one 30(b)(6) deposition limit but then insist on unilaterally breaking up the allotted 14 hours into multiple 30(b)(6) notices for depositions to be held at different times of discovery (potentially months apart and through the service of multiple 30(b)(6) notices with additional topics). This is a clear attempt to get around the one 30(b)(6) limit. Under Plaintiffs' proposal, they could have one 30(b)(6) deposition of 7 hours, leave it open, take other discovery, issue a new notice with new topics, and then hold a second 30(b)(6) deposition for 7 hours. Multiple deposition notices (which may include new topics) are the equivalent of multiple depositions. Defendants are concerned about the significant burden of agreeing to be subject to multiple 30(b)(6) depositions. Given the breadth of the allegations in this case, it is likely that Defendants may have to prepare multiple witnesses for numerous 30(b)(6) topics, but Plaintiffs' proposal would demand even more and require Defendants to prepare the same witnesses multiple times for multiple 30(b)(6) depositions down the road.

Defendants' proposed approach to agree to a single 30(b)(6) deposition for up to 14 hours of testimony is therefore the more reasonable and efficient approach. Moreover, as was explained to Plaintiffs in meet and confer correspondence, Defendants are willing to negotiate in good faith should Plaintiffs believe a second 30(b)(6) deposition is necessary. Accordingly, Defendants request the Court enter Defendants' proposed Non-Expert Deposition Order.

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